

BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY

IN THE MATTER OF:)	Case No.: 3601M
)	
HARRY GALE, D.O.)	FINDINGS OF FACT, CONCLUSIONS
Holder of License No. 2772)	OF LAW AND ORDER
)	
For the practice of osteopathic medicine in the)	
State of Arizona)	
)	
)	

On or about September 2 and 15, 2005, the Arizona Board of Osteopathic Examiners (hereafter "Board") received information from MICA and plaintiff's counsel in Maricopa Superior Court case No. CV2004-0954 pursuant to Arizona statutes regarding a medical malpractice complaint of patient "DC" alleging possible violations of the Board's statute of unprofessional conduct.

On or about September 23, 2005, the Board open complaint No. 3601M and notified Harry Gale, D.O. (hereafter known as Respondent") on October 12, 2005 of this complaint and requested a response to the allegations contained therein.

On or about October 23, 2005, the Respondent provided a response to the Board and included a copy of patient DC's records.

On December 9, 2006, the Board, after receiving all of the documentation, conducted its initial review of this matter and voted to refer it to an Investigative Hearing.

On January 20, 2007, the Board invited the Respondent to an investigative hearing. The Respondent appeared for the proceeding. After hearing Respondent's testimony and considering the documents and evidence submitted, the Board voted to enter the following Findings of Fact and Conclusions of Law, and Order of Censure and Probation based upon that information.

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2. Respondent is the holder of License No. 2772 issued by the Board for the practice of osteopathic medicine in the State of Arizona.

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2. Patient DC returned to Respondent on September 23, 2002 with continued complaints of back pain along with pain in the left chest area as well as "lancinating" pain into his extremities. Respondent continued his course of treatment and ordered a cervical spine x-ray along with a prescription for mild painkillers. Additional painkillers were prescribed after Respondent received a telephone call from Patient DC's wife on September 26, 2002.

4. Respondent ordered a stat MRI and sent Patient DC to Yavapai Regional Medical Center, telling him to keep his head straight and to request a cervical collar upon arrival at the hospital. The cervical disc rupture and subsequent spinal cord compression along with subsequent events resulted in Patient DC becoming a paraplegic.

1 5. Upon questioning by the Board as to the lack of a neurological examination
2 during the visits on September 11 and 23, Respondent stated, and continued to believe, that a
3 neurological examination was not necessary in light of the symptoms he observed at that time.

4 6. The Board determined that based on its review of the information received and
5 the testimony of Respondent that his actions or lack thereof indicated an inappropriate diagnosis,
6 examination and care of patient DC, and that action should be taken against Respondent's
7 license. Respondent also appeared to continue to show a lack of knowledge in this area.

8 CONCLUSIONS OF LAW

9 7. The conduct described in Findings of Fact 1 through 6 herein constitutes
10 unprofessional conduct as defined by the following A.R.S. § 32-1854 subsections:

11 (6) Engaging in the practice of medicine in a manner that harms or may
12 harm a patient or that the Board determines falls below the community
13 standard.

14 (38) Any conduct or practice that endangers a patient's or the public's
15 health or may reasonably be expected to do so.

16 ORDER

17 Pursuant to the authority vested in the Board,

18 1. **IT IS HEREBY ORDERED** that Harry Gale, D.O. ("Respondent") Holder of
19 Osteopathic medical license number 2772, is issued a **DECREE OF CENSURE** pursuant to the
20 provisions of A.R.S. § 32-1855 (E)(4).

21 2. **IT IS FURTHER ORDERED** that Respondent be placed on **PROBATION** for
22 a period of **Six (6) months** from the date of this order pursuant to the provisions of A.R.S. § 32-
23 1855 (E)(5).

24 3. Probation shall include the following terms:

25 a. Respondent, at his own expense, shall undergo an evaluation within 60
days by **Physician Assessment and Clinical Education Program ("PACE")** at
the University of California, San Diego to determine Respondent's ability to
safely practice medicine in the State of Arizona. Specifically, the evaluation needs
to include Respondent's ability to appropriately conduct histories and physical
evaluations, including neurological examination. Any and all reports, assessments

1 or other documents generated by PACE shall be forwarded by PACE to the Board
2 for review.

3 b. Respondent shall submit an application and fee to the PACE program no
4 later than seven (7) days after the effective date of this Order.

5 c. Respondent, at his own expense, shall undergo a neuropsychological
6 assessment and evaluation within 45 days by **Phillip D. Lett, Ph.D.** at
7 Professional Psychology Associates, P.C. 4222 East Camelback Road, Suite
8 230H, Phoenix, AZ 85018 V: 602-852-0911 F: (602) 852-0632 Email:
9 philliplett@yahoo.com

10 d. Respondent shall contact Dr. Lett and/or his office within ten (10) days to
11 schedule this evaluation and assessment. Any and all reports, assessments or other
12 documents generated shall be forwarded to the Board for review.

13 4. Respondent's failure to comply with the requirements of this Order shall
14 constitute unprofessional conduct as defined at A.R.S. § 32-1854(26), as amended, and may be
15 considered as grounds for further disciplinary action (e.g., suspension or revocation of license) in
16 the event that Respondent fails to comply with any of the requirements of this Order.

17 ISSUED THIS 12th DAY OF FEBRUARY 2007.

18 ARIZONA BOARD OF OSTEOPATHIC EXAMINERS

19 By: _____

20 Jack Confer, Executive Director

21 **NOTICE OF RIGHT TO REQUEST REVIEW OR REHEARING**

22 You have the right to request a rehearing or review of this matter pursuant to A.R.S. § 41-
23 1092.09. The request for rehearing or review must be filed with the Arizona Board of
24 Osteopathic Examiners within thirty (30) days. If you request a review or rehearing, you must
25 base your request on at least one of the eight grounds for review or rehearing that are allowed
under A.A.C. R4-22-106(D). Failure to file a motion for rehearing or review within 30 days has
the effect of prohibiting you from seeking judicial review of the Board's decision in the AZ
Courts.

1 Original "Findings of Fact, Conclusions
2 of Law and Order"
3 filed this 12th day of February, 2007 with the:

4 Arizona Board of Osteopathic Examiners
5 In Medicine and Surgery
6 9535 East Doubletree Ranch Road
7 Scottsdale AZ 85258-5539

8 Copy of the foregoing "Findings of Fact,
9 Conclusions of Law and Order"
10 sent by certified mail, return receipt requested
11 this 12th day of February, 2007 to:

12 Harry Gale, D.O.
13 3190 N. Windsong Drive
14 Prescott Valley, AZ 86314

15 Copies of the foregoing "Findings of Fact,
16 Conclusions of Law and Order"
17 sent via regular mail/hand delivered this ____ day of February, 2007 to:

18 Blair Driggs, AAG
19 Office of the Attorney General CIV/LES
20 1275 West Washington
21 Phoenix AZ 85007

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